

*United States Court of Appeals
for the Second Circuit*



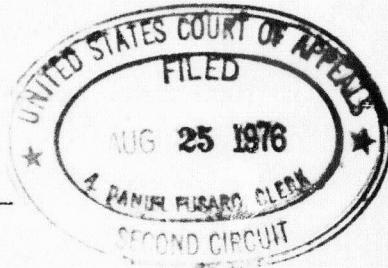
**APPELLEE'S
APPENDIX**

76-7229

United States Court of Appeals

for the
SECOND CIRCUIT

76-7229



JOSEPH T. GORMLEY, JR., ET AL, *Appellees*

vs.

VINCENT TRANTOLO, *Appellant*

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

APPENDIX TO BRIEF FOR APPELLEES

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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

VINCENT J. TRANTOLO
Plaintiff

vs.

JOSEPH T. GORMLEY, JR.
JOHN F. MULCAHY, JR.
AUSTIN J. McGUIGAN
JOHN DROPICK
GLEN COE
SEYMOUR ROTHENBERG
GUY WOLFE, III

Defendants

I

JURISDICTION

The jurisdiction of this Court is invoked under the First, Fourth, Fifth, Sixth and Fourteenth Amendments to the *United States Constitution*, this being an action concerning the deprivation of certain Constitutional rights including, but not limited to, the right of free speech, the right to be free from unreasonable seizures of the person, the right to life, liberty and the pursuit of happiness, the right to be informed of criminal charges, the right securing the privileges and immunities of the citizens of the several States of the United States, and the right of equal protection of the law, all under the authority of Title 28 U.S.C. 1343, Title 42 U.S.C. 1983 and Title 42 U.S.C. 1985, all of which hereinafter more fully appears.

II

PARTIES

1. The plaintiff, Vincent J. Trantolo, of the Town of Avon, County of Hartford and State of Connecticut, is an attorney admitted to the practice of law in the State of Connecticut and authorized to practice law before this Court and further is a citizen of the State of Connecticut and a citizen of the United States.
2. The defendant, Joseph T. Gormley, Jr., of the Town of Trumbull, County of Fairfield and State of Connecticut, is the Chief State's Attorney in and for the State of Connecticut, charged by law with representation of the State in criminal cases.
3. The defendant, John F. Mulcahy, Jr., of the Town of Glastonbury, County of Hartford and State of Connecticut, is the Assistant Chief State's Attorney in and for the State of Connecticut, charged by law with the representation of the State in criminal cases, particularly concerning the Court of Common Pleas and is under the authority and control of the defendant, Joseph T. Gormley, Jr.
4. The defendants, Austin J. McGuigan, of the Town of New Britain, County of Hartford and State of Connecticut, John Dropick, of the Town of Simsbury, County of Hartford and State of Connecticut, and Glen Coe, of the Town of West Hartford, County of Hartford and State of Connecticut, are Special Prosecutors in and for the State of Connecticut within the office and under the authority of the defendants, Joseph T. Gormley, Jr. and John F. Mulcahy, Jr. and said defendants, Austin J. McGuigan, John Dropick and Glen Coe are also charged by law with the representation of the State in criminal

cases, particularly those pending in the Court of Common Pleas.

5. The defendant, Seymour Rothenberg, of the Town of Windsor, County of Hartford and State of Connecticut, is a Chief Prosecutor in the Court of Common Pleas for the 13th Geographical Area, charged by law also with the representation of the State in criminal cases.

6. The defendant, Guy Wolfe, III, of the Town of Simsbury, County of Hartford and State of Connecticut, is an Assistant Prosecutor to the aforesaid defendant, Seymour Rothenberg, in and for the Court of Common Pleas for the 13th Geographical Area, also charged by law with the representation of the State in criminal cases pending before said Court.

III

FACTS

1. On March 13, 1974, in the early evening, the plaintiff, Vincent J. Trantolo, and Lance Kiss, D.D.S. were at the Loomis School, Windsor, Connecticut, in the gym participating in an intramural basketball game with other members of the medical community. When the plaintiff and Dr. Kiss went down to the locker room where the plaintiff had previously placed his trousers, wallet, etc. in a locker, the plaintiff noticed three young men in the locker room who left the locker room very quickly and their abrupt departure aroused the suspicions of the plaintiff.

2. Thereupon the plaintiff checked the locker wherein he had placed his wallet, etc. to find that the money in his wallet had been stolen.

3. The plaintiff immediately started out after the three men who he next saw running across the gym parking lot to a parked auto. The plaintiff in the presence of Dr. Kiss confronted the three young men while they were in the locked car and knocked on the window and requested that the young men leave the automobile and return his money. They refused. The plaintiff again banged the window, again demanded that the young men alight from the vehicle.

4. At this time, the glass on the passenger side broke inwardly, scattering glass in the interior of the automobile.

5. It was subsequently determined that the three men involved were Michael Sullivan, Danny Babich and Robert V. Marcin, all of Windsor, Connecticut.

6. Michael Sullivan sustained superficial injuries and was attended in the gym by the doctors present.

7. The plaintiff caused the Windsor Police Department to be summoned to the scene and after giving them a brief summary of the facts, left for the hospital because of a serious injury to his arm, and on the following evening, March 14, 1974, went to the Windsor Police Department to lodge his formal complaint of theft against the three men. At that time, a jacket in the possession of the Windsor Police Department was identified as the one that Michael Sullivan had been wearing when seen leaving the locker room and at the time he was confronted in the parking lot. In the pocket of this jacket was the plaintiff's money, now covered with blood.

8. The three men, Marcin, Babich and Sullivan, on March 14, at the police station or during that period, denied that they or any one of them had taken the money and, through their attorney, alleged that the plaintiff had "planted" the money on

Michael Sullivan and further that the plaintiff, Vincent J. Trantolo, had assaulted Michael Sullivan without reason, necessity or provocation.

9. The plaintiff, Vincent J. Trantolo, and Dr. Lance Kiss provided statements under oath to the police for the purpose of securing a warrant for arrest for the three young thieves.

10. About a week later, the plaintiff had opportunity to inquire of the defendant, Seymour Rothenberg, the Chief Prosecutor of the Court of Common Pleas having jurisdiction of the status of the matter, and this defendant replied to the plaintiff that he was familiar with the facts in the case and that the three men involved would all be arrested. Thereafter the plaintiff discovered that contrary to the statements and representations made by the defendant, Rothenberg, no arrest warrants were applied for or issued.

11. Thereafter, the plaintiff again attempted to determine if the people responsible for the theft of his money had been arrested. In so doing, the plaintiff contacted the defendant, Guy Wolfe, III, who is an Assistant to the defendant, Rothenberg. The defendant, Wolfe, said to the plaintiff that blood samples would have to be taken from the parties involved to determine whose blood was on the money. Despite an objection to the victim having to establish his "innocence" the plaintiff, on his own time and at his own expense, submitted to a blood test and the results thereof were certified to the defendant, Guy Wolfe, III. The results thereof were not conclusive as to whose blood was on the money.

12. Thereafter, the defendant, Guy Wolfe, III, informed the plaintiff that the case was now "too hot to handle" and he was referring the matter to the Special Prosecutor, John F. Mulcahy,

Jr., who is under the supervision of the defendant, Joseph T. Gormley, Jr. When the plaintiff then contacted the defendant, Seymour Rothenberg, said defendant told the plaintiff that the case was no longer in his hands.

13. The case was then referred by the Special Prosecutor to his assistant, the defendant, Austin J. McGuigan. A meeting between the defendant, McGuigan, and the plaintiff occurred in Windsor shortly after, at which time the defendant, McGuigan, stated that strong and persistent allegations had been made that the plaintiff, Vincent J. Trantolo, had planted the money in Michael Sullivan's jacket. At this meeting, the use of a lie detector or polygraph examination was discussed. The defendant, McGuigan, unequivocally stated that he had great faith in a polygraph examination and that as far as he, the defendant, McGuigan, was concerned, the results of such an examination would prove the veracity of plaintiff's complaint. The defendant, McGuigan, further agreed that the results of the test would be admissible in any court proceedings. The only stipulation attached to the taking of such a test, in addition to the foregoing, was that Michael Sullivan should also be offered the right to take a polygraph examination. Michael Sullivan refused such a test.

14. On May 28, 1974, nonetheless, the plaintiff submitted to a polygraph examination at the Connecticut State Police Headquarters in Hartford. The results as reported to the plaintiff by the defendant, McGuigan, was that the plaintiff had successfully completed the polygraph examination. The defendant, McGuigan, further stated that he, McGuigan, believed that Sullivan and/or the other young men involved had, in fact, taken the money of the plaintiff notwithstanding their statements and claims to the contrary. Thereafter, the plaintiff again

inquired of the defendant, but McGuigan still neglected to seek arrest warrants against the three thieves.

15. When four months had passed without any action by any of the defendants in this matter, the plaintiff on July 17, 1974, complained by letter to the Governor of the State of Connecticut setting forth in detail the foregoing facts.

16. Copies of transmittal letters and correspondence from the Governor's Office indicated that this letter was turned over to the Judiciary Department of the State of Connecticut and from said Department was given to the defendant, Joseph T. Gormley, Jr., the Chief State's Attorney.

17. On July 31, 1974, more than four months after the incident had occurred, some four months after all the statements had been taken, some two months after all evidence, including the polygraph, had been gathered by the State but two (2) weeks after the plaintiff wrote the Governor, the plaintiff, a victim of the larceny, was arrested by virtue of a warrant from the Court of Common Pleas charging the plaintiff with violation of §53a-61 of the Connecticut General Statutes "assault in the third degree" and the same was done notwithstanding the fact that the defendants and some or all of them knew or had reason to know that the statements under oath of the three young men used to obtain such warrant were false. The plaintiff was forced to submit to arrest, undergo the taking of his fingerprints and the processing of his photograph and suffered all the indignities and humiliation that accompanies such procedures. Although plaintiff charged a conspiracy of the three, only Michael Sullivan was arrested, and his case has been concluded in such a manner that the plaintiff is unable to determine what happened. The plaintiff was not called or made privy to any matters concerning the disposition of said case although he is the com-

plaintant, and as a matter of fact, the defendants still refuse and neglect to inform the plaintiff of how and in what manner the case was disposed of, if at all, and whether their activities against Michael Sullivan resulted in any exculpatory information for the plaintiff, Vincent J. Trantolo.

18. During the pendency of the criminal charges against the plaintiff, the defendant, McGuigan, asked the plaintiff's attorney in the criminal case, Waldemar J. Lach, Esq., to file a motion in behalf of the plaintiff under section 499a of the Connecticut Practice Book, as amended. The defendant, McGuigan, unequivocally stated he would have no objection to the motion. Thereafter, pursuant to the defendant's, McGuigan's, suggestion, such a motion was filed on behalf of the plaintiff. Then the defendant, Rothenberg, who had previously indicated that the young men involved would be arrested and who had also indicated that he was no longer involved in the case, appeared in Judge Monchun's chambers to warn the Judge against granting the motion, contrary to his, Rothenberg's, representations and contrary to the representations made by the defendant, McGuigan.

19. Thereafter, counsel for plaintiff informed defendant, McGuigan, a subsequent Motion to Dismiss would be heard at 2:00 p.m. on Thursday, February 27, 1976, in Windsor, for the purpose of offering evidence and that time was important and that the State's charges be made more specific. McGuigan said he would be there.

20. At about 4 o'clock just prior to the hearing on the Motion to Dismiss and contrary to the implied representations made by the defendant, McGuigan, in reprisal to plaintiff's pressing his Motion for Bill of Particulars (dated December 3, 1974), he, McGuigan, filed additional charges against the plaintiff, charg-

ing the plaintiff with violation of §53a-64 of the Connecticut General Statutes, "Reckless Endangerment."

21. At the hearing on February 28, 1976, although the State knew that the complainants, Sullivan and Babich, were to testify, the prosecutors did not inform the Court that the witnesses were offering untruthful statements to obtain a conviction in a criminal case and contrary to their oaths as attorneys.

22. §53a-21 of the Connecticut General Statutes entitled, "Use of physical force in defense of property; larceny; criminal mischief" provides:

"A person is justified in using reasonable physical force upon another person when and to the extent that he reasonably believes it necessary to prevent an attempt by such other person to commit larceny or criminal mischief involving property, or when and to the extent he reasonably believes it necessary to regain property which he reasonably believes to have been acquired by larceny within a reasonable time prior to the use of such force; but he may use deadly physical force under such circumstances only in defense of person as prescribed in section 53a-19."

The defendants knew and know that the plaintiff was making an attempt to recover his personal property and that a defense to any assault charge will be based upon the aforesaid section and proof concerning Sullivan's, et al, theft of the money is of great importance to the trial of the case and for the plaintiff in his defense. Again, notwithstanding the defendants' knowledge of the untruthful statements of the complaining witnesses in this regard, the defendants have and will continue to maintain that such witnesses are honest, open and candid.

23. The plaintiff believes that such action and the continued

prosecution of the criminal case against the plaintiff by the defendants is in violation of his rights guaranteed under the United States Constitution in one or more of the following ways:

- (a) In that the defendants' activities constitute a violation of the plaintiff's right to free speech under the First Amendment to the United States Constitution.
- (b) In that the defendant's activities constitute a violation of the plaintiff's right to be free from unreasonable seizures of the person under the Fourth Amendment to the United States Constitution;
- (c) In that the defendants' activities constitute the right to be free from the denial of life, liberty or property without due process of law under the Fifth Amendment to the United States Constitution;
- (d) In that the defendants' activities constitute a violation of the right to be confronted by witnesses and the right to be informed of the charges against him under the Sixth Amendment to the United States Constitution;
- (e) In that the defendants' activities constitute a violation of plaintiff's rights to the privileges and immunities of the citizens of the United States under the Fourteenth Amendment to the United States Constitution;
- (f) In that the defendants' activities constitute a violation of plaintiff's right to equal protection of the laws and all of the foregoing as guaranteed to the plaintiff under the Fourteenth Amendment to the United States Constitution.

24. The plaintiff believes and therefore avers that the continued prosecution of this case by the defendants on behalf of the State is for the purpose of persecution, not prosecution, for the purpose of harassment, nor for justice and fair play, for the purpose of ridiculing, embarrassing and requiring the plaintiff to apologize and is a reprisal against the plaintiff for writing a letter to the Governor, all done in violation of his Constitutional rights, as aforesaid. Further, the motive for the prosecution of the criminal case against the defendant is for the purpose of harassment and not for the purpose of the fair and due enforcement of the criminal laws of the State of Connecticut.

25. The plaintiff has and will continue to suffer irreparable injury by undergoing the prosecution of the criminal charges against him and the subjecting of him to a criminal trial.

26. The plaintiff believes and therefore avers further that the improper actions of the defendants, as aforesaid, constitute a conspiracy among at least two or more of the defendants to deprive the plaintiff of his Constitutional rights as aforesaid.

27. The defendants are acting in their official capacity and under the authority of State law.

28. The plaintiff has no adequate remedy at law.

WHEREFORE, the plaintiff prays:

1. That this Court enter a temporary restraining order which enjoins and/or prohibits the defendants or any one of them or any other person acting under their control and/or authority from further prosecution and from conducting any further hearing, motions, trials, etc. of the plaintiff, Vincent J. Trantolo, in the criminal case No. CR13-23675 now pending before the Court of Common Pleas for the 13th Geographical Area in

Windsor, Connecticut, and/or from further prosecution of the plaintiffs for violation of §53a-61 of the Connecticut General Statutes and/or §53a-64 of the Connecticut General Statutes or any other criminal statute which prosecution arises out of the facts and circumstances described in the foregoing complaint;

2. That this Court order a preliminary injunction in the same tenor and effect as the temporary restraining order;
3. That this Court enter a permanent injunction in the same tenor and effect as the temporary restraining order;
4. Such other relief as in equity or at law may appertain.

Waldemar J. Lach
Attorney for the Plaintiff